

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB APC 13-04 Education Capital Outlay

**SPONSOR(S):** Appropriations Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee	23 Y, 1 N	Voyles	Leznoff

### SUMMARY ANALYSIS

This bill makes various changes related to the manner and requirements of state universities regarding fixed capital outlay. The bill eliminates the requirement that universities enter into campus development agreements with local government host communities. The campus master plan would be required to identify the level-of-service standard established by the local government and the entity that would provide the service to the campus.

The bill increases the cap for university capital improvement fees from a maximum of 10% of tuition to 20% of tuition and tuition differential; and it increases the cap on the incremental increase per year from \$2 to \$3 per credit hour.

The bill makes the following changes to Section 1010.62, F.S., relating to revenue bonds and debt:

- Specifically allows public private partnership agreements as a type of university debt.
- Expands the sources of revenues that can be used to secure debt to include technology fees and sales and services of education departments.
- It amends the calculation of the technology fee to include tuition differential.
- Increases the amount of athletic fees that may be used to pay and secure revenue bonds.
- Eliminates the "functional relationship test" to allow auxiliary enterprises revenues (i.e. housing and parking) and revenues from royalties and licensing to be used to secure debt for academic, education and research facilities that are part of a multi-use project.
- Allows academic or educational facilities that are part of a multi-purpose capital outlay project to be bonded without legislative approval of the specific project.

The bill increases from \$1 million to \$2 million the maximum amount universities may spend for building replacement or renovation projects.

The elimination of the requirement for universities to enter into campus development agreements with local government host communities will result in cost avoidance for future Legislatures. Consequently, local governments will have a reduction in their revenue collections. It is anticipated that state university revenues from Capital Improvement Fees and Technology Fees will result in an indeterminate positive impact.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Concurrency**

##### History:

During the 1993 Session, the Legislature enacted the concurrency requirements for new developments<sup>1</sup>. That same year the Legislature created the University Concurrency Trust Fund to provide a source of funds from which universities could pay for concurrency assessments by local governments. The funding source was the general revenue service charge assessed on local option motor fuel taxes.<sup>2</sup> As part of a major transportation package called "Mobility 2000", the 2000 Legislature phased out the funding for the University Concurrency Trust Fund and redirected the revenues to the State Transportation Trust Fund<sup>3</sup>. The University Concurrency Trust Fund<sup>4</sup> was abolished during the 2011 Legislative Session.

Also, during the 2011 Legislative Session, HB 7207 was passed by the Legislature and subsequently signed into law. Provisions of this bill maintained the state concurrency requirements for sanitary sewer, solid waste, drainage, and potable water. This bill removed the state concurrency requirements for parks and recreation, schools, and transportation facilities. The bill provided that if concurrency is applied to other public facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels-of-service, to guide its application.

##### Present Situation:

Section 1013.30, F.S, contains the provisions for campus planning and concurrency management that supersede the general requirements of part II of chapter 163, F.S. Each university board of trustees is required to adopt a campus master plan that identifies general land uses and addresses the need for and plans for provision of roads, parking, public transportation, solid waste, drainage, sewer, potable water, and recreation and open space for a 10 to 20 year period. A master plan must contain the following elements: future land use, intergovernmental coordination, capital improvements, recreation and open space, general infrastructure, housing, and conservation. Each element must address compatibility with the surrounding community. Master plans must be updated at least every 5 years.

Within 270 days after the adoption of the campus master plan, the university board of trustees is required to draft a proposed campus development agreement for each local government and send it to the local government<sup>5</sup>. A campus development agreement must do the following:

- Identify the geographic area of the campus and local government covered by the campus development agreement;
- Establish its duration, which must be at least 5 years and not more than 10 years;
- Address public facilities and services including roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation and public transportation;
- Identify the level-of-service standard established by the applicable local government, identify the entity that will provide the service to the campus, and describe any financial arrangements between the Board of Governors and other entities relating to the provision of the facility or service;

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<sup>1</sup> 93-206, Laws of Florida

<sup>2</sup> 93-176, Laws of Florida

<sup>3</sup> 2000-257, Laws of Florida

<sup>4</sup> 2011-63, Laws of Florida

<sup>5</sup> Section 1013.30(2)(a), F.S. defines "affected local government" as a unit of local government that provides public services to or is responsible for maintaining facilities within a campus of an institution or is directly affected by development that is proposed for a campus. Section 1013.30(2)(c), F.S. defines "host local government" as a local government within the jurisdiction of which all or part of a campus of an institution is located, but does not include a county if no part of an institution is located within its unincorporated area.

- Determine the impact of existing and proposed campus development on facilities and services for the term of the agreement and identify any deficiencies;
- Be consistent with the adopted campus master plan and host local government comprehensive plan.

With regards to the impact of campus development on facilities and services, the university board of trustees' fair share, as prescribed in subsection 1013.30(13), F.S., of the cost must be stated in the campus development agreement. The university board of trustees is responsible for paying the fair share identified in the campus development agreement. Funds provided by universities in accordance with the campus development agreements are subject to appropriation by the Legislature. A development authorized by a campus development agreement may not be built until the funds to be provided pursuant to the university board of trustees' fair share of the cost are appropriated by the Legislature.

Effect of the Bill:

The bill eliminates the requirement that universities enter into campus development agreements with local governments. The campus master plan would be required to identify the level-of-service standard established by the local government and the entity that would provide the service to the campus. Universities could begin constructing a campus development without having to pay the impact costs.

**University Capital Improvement Fee**

Present Situation:

State University System institutions may charge a Capital Improvement Trust Fund (CITF) fee of up to 10% of tuition for resident students or the sum of tuition and out-of-state fees for nonresident students. The fee may increase no more than \$2 per credit hour over the prior year for resident students.

Effect of the Bill:

The bill increases the maximum amount that may be levied from 10% to 20% making it consistent with the authorization for state colleges. The determination of the amount of the fee will be based upon the sum of tuition and tuition differential. It also increases the cap on the incremental increase per year from \$2 to \$3 per credit hour. Universities are authorized to charge up to an additional \$18.59 per credit hour at 20% of the base tuition and tuition differential for a total of \$28.92, and change the annual increase from \$2 to \$3. Implementing the \$3 increase per year, the total increase for the CITF fee would take place over the course of seven years. In order to increase the CITF fee an appointed fee committee, of whom at least 50% are students, at each university must recommend the increase; the university board of trustees must then seek the approval from the Board of Governors.

**Technology Fee**

Present Situation:

The board of trustees of a State University System institution may establish a technology fee of up to 5% of the tuition per credit hour. Revenue from the technology fee may be used to enhance instructional technology resources for students and faculty.

Effect of the Bill:

The use of the revenue from the technology fee is expanded to include technology related facilities. The determination of the amount of the fee will be based upon the sum of tuition and tuition differential per credit hour. This change provides funding that could be used for building, renovating or expanding facilities for data centers and general computer labs.

**Revenue Bonds and Debt**

## Present Situation:

### *Definition of Debt:*

The current definition of debt in section 1010.62, F.S., does not include public-private partnership agreements. Public-private partnerships (PPP) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects. Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service of facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.

Universities have generally not engaged in PPP ventures related to the construction of new facilities, as PPP are not clearly contemplated by either section 1010.62, F.S. or the Board of Governors State University System Debt Management Guidelines.

### *Revenue Sources for Bonding Purposes:*

Current law caps the amount of debt service that can be secured by revenues from athletic fees to 5% of the fees collected during the most recent 12 consecutive months. Currently universities may not use technology fees and sales and services of educational departments for debt service.

### *Functionality:*

Revenues from royalties and licensing fees may be used to pay and secure revenue bonds so long as the facilities being financed are functionally related to the university operation or direct-support organization reporting the royalties and licensing fees. Also, revenues from one auxiliary enterprise may not be used to secure revenue bonds of another auxiliary unless the Board of Governors determines that the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure the revenue bonds.

### *Legislative Approval of Capital Outlay Projects:*

Projects related to housing, transportation, health care, research or research-related activities, food service, retail sales or student activities are approved without further legislative action pursuant to section 1010.62(7)(a)4., F.S. Projects related to academic and educational activities that are part of a multi-purpose project are not included in the list of approved projects.

## Effect of the Bill:

### *Definition of Debt:*

Public private partnership agreements are added to the definition of debt. The inclusion of PPP to section 1010.62, F.S., will provide authority for the Board of Governors to amend the universities Debt Management Guidelines so that public-private arrangements can be included as another financing mechanism.

### *Revenue Sources for Bonding Purposes:*

The bill allows revenues from technology fees and from sales and services of educational departments to be used to secure debt. The debt service that can be secured by these revenues is capped at 75% of the fees collected during the most recent 12 consecutive months. In addition, debt service that can be secured by athletic fees is also capped at 75% of the fees collected during the most recent 12 consecutive months.

### *Functionality:*

The bill eliminates the requirement for auxiliary revenues and revenues from royalties and licenses to be functionally related to the debt being secured when the debt is for academic, education and research facilities that are part of a multi-use facility. It would further allow for auxiliary revenues to be used to support the construction of academic or research space, subject to Board of Governors determination. This would provide for revenue-generating enterprises, such as university housing, or university parking, to subsidize the construction of academic space in mixed-use facilities.

### *Legislative Approval of Capital Outlay Projects:*

The bill allows academic or educational facilities that are part of a multi-purpose facility to be bonded without legislative approval of the specific project.

## **Construction/Maintenance**

### Present Situation:

When it is determined that the cost of repair or renovation of a facility is greater than or equal to the cost of replacement, universities are authorized to use state capital outlay appropriations from the Public Education Capital Outlay and Debt Service (PECO) Trust Fund for replacement of facilities costing less than \$1,000,000 and 10,000 square feet without specific additional legislative approval for the project. Universities are also authorized to use non-state sources, such as federal grants, private gifts, leases, etc. to construct new facilities, or remodel existing facilities if the cost is less than \$1,000,000. The limit has not been increased since 2002.

### Effect of the Bill:

The bill increases the cap on building replacement projects that can be undertaken without legislative approval from \$1 million to \$2 million. It also removes the requirement that the facility be equal to or less than 10,000 gross square feet in size. This provides greater flexibility for repairs, maintenance and replacement of minor structures by authorizing such projects to the extent funding is available.

#### **B. SECTION DIRECTORY:**

**Section 1:** amends paragraph (g) and (h) of subsection (7) of section 1001.706, F.S., to remove the requirement for the Board of Governors to adopt and execute a campus development agreement.

**Section 2:** amends paragraph (c) of subsection (8) and subsection (13) of section 1009.24, F.S., increasing the capital improvement fees for state universities.

**Section 3:** amends paragraph (c) of subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), and paragraph (a) of subsection (7) of section 1010.62, F.S., to provide state university institutions more flexibility in bonding.

**Section 4:** amends section 1013.30, F.S., to remove the requirement for universities to enter into campus development agreements with local governments.

**Section 5:** amends subsection (6) of section 1013.33, F.S., conforming language to amendments to section 1013.30, F.S.

**Section 6:** amends paragraph (h) of subsection (1) of section 1013.64, F.S., to increase the cap for minor projects funded with PECO Trust Fund appropriations.

**Section 7:** amends paragraph (e) of subsection (2) of section 1013.74, F.S., to increase the cap for minor projects funded with non-state sources.

**Section 8:** Provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None
2. Expenditures:

The last appropriation to universities for their share of the cost identified in campus development agreements was for \$54,149,066 in Fiscal Year 2007-08. The elimination of the requirement for universities to enter into campus development agreements with local government host communities will result in cost avoidance for future Legislatures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate – Universities will not be required to pay the concurrency costs associated with a new campus development agreement. These costs were associated with the mitigation of development impact on the local host community, and typically were for a proportionate share of infrastructure projects, such as stormwater retention ponds, additional sidewalks and road-widening or other traffic enhancements. The previous funding stream, the University Concurrency Trust Fund, was eliminated, and the final payment from the fund was in 2010. The average annual payment to local host communities from the FY 2007-08 appropriation has been an estimated \$9.8 million.

2. Expenditures:

Indeterminate. Local host communities may experience additional delays in implementing local infrastructure enhancements needed to maintain level-of-service standards. If campus development occurs as contemplated in the campus master plan, university growth in student enrollment will lead to the creation of more jobs on campus, and economic development. There may be increased vehicle congestion absent the construction to expand the appropriate infrastructure.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

### D. FISCAL COMMENTS:

It is anticipated that state university revenues from the Capital Improvement Fees and Technology Fees will result in an indeterminate positive impact. Universities are authorized to charge up to an additional \$18.59 per credit hour at 20% of the base tuition and tuition differential for a total of \$28.92, and change the annual increase from \$2 to \$3. Implementing the \$3 increase per year, the total increase for the CITF fee would take place over the course of seven years. In order to increase the CITF fee an appointed fee committee, of whom at least 50% are students, at each university must recommend the increase; the university board of trustees must then seek the approval from the Board of Governors.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Article VII, Section 18(b) of the Florida Constitution provides that with certain exceptions, the legislature may not “enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989”. While the bill eliminates the requirement that universities pay for concurrency assessments by local governments as part of a local campus development agreement and may

therefore reduce revenues collected by local governments, the concurrency requirements were enacted in 1993 and did not exist on February 1, 1989. As such, the mandates provision of the constitution does not appear to apply.

Article VII, Section 18(a) of the Florida Constitution provides that with certain exceptions, no county or municipality “shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds.” This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds.

2. Other:

B. RULE-MAKING AUTHORITY: none

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**